

SAMUEL PINEDA PINEDA	§	
VS.	§	CIVIL ACTION NO. 1:13-CV-622
UNITED STATES OF AMERICA	§	

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration of all the pleadings and the relevant case law, the court concludes that movant’s objections lack merit. Citing *DePierre v. United States*, 564 U.S. 70 (2011), movant contends that his attorney should have requested an independent laboratory analysis because the government must scientifically identify the controlled

substance. In *DePierre*, the United States Supreme Court held that the term “cocaine base” means not just “crack cocaine,” but any cocaine in its chemically basic form. *DePierre*, 564 U.S. at 88. The holding in *DePierre* does not impact movant’s case because the controlled substance in this case was methamphetamine. Further, counsel did not provide ineffective assistance by failing to request an independent analysis because there was no reason to believe it would have yielded a different result than the government’s laboratory analysis.

In this case, the movant is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the movant need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. If the motion was denied on procedural grounds, the movant must show that jurists of reason would find it debatable: (1) whether the motion raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Id.* at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81.

Here, the movant has not shown that any of the issues raised by his claims are subject to debate among jurists of reason, or that a procedural ruling is incorrect. In addition, the questions presented are not worthy of encouragement to proceed further. The movant has failed to make a sufficient showing to merit the issuance of a certification of appealability. Accordingly, a certificate of appealability shall not be issued.

ORDER

Accordingly, movant's objections (document no. 12) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 10) is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation. A certificate of appealability will not be issued.

So ORDERED and SIGNED this 27th day of March, 2017.

A handwritten signature in cursive script, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge